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10/533,785	05/04/2005	Jeroen Wigard	60091.00389	6075

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EXAMINER	
SANTIAGO CORDERO, MARIVELISSE	
ART UNIT	**PAPER NUMBER**
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/533,785	WIGARD ET AL.	
	Examiner	Art Unit	
	Marivelisse Santiago-Cordero	2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 April 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *7 and 15* is/are allowed.

6)☒ Claim(s) *1-6,8-14 and 16-28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed on 4/9/07 have been fully considered but they are not persuasive.

Regarding claims 17, 21, and 25, Applicant argues that Daniel fails to disclose or suggest "a resource allocation unit configured to allocate resources to the requests in the queue by using minimum bit rates as bit rate allocation portions" (Remarks: page 17, 3rd full paragraph), since the minimum bandwidth of Daniel is not used as bit rate allocation portion in the sense that the term is used in the presently pending claims (Remarks: page 18, 1st full paragraph). In response, the Examiner respectfully disagrees. At the outset, Applicant has not explained in what "sense" the term is used in the presently pending claims, so as to distinguish it from the applied prior art. In addition, as stated in the last Office Action, Daniel does disclose a resource allocation unit configured to allocate resources to the requests in the queue by using minimum bit rates as bit rate allocation portions in paragraphs [0074]-[0076], [0149], [0205], [0218]-[0219], [0221], [0223], [0231], [0240], and [0257]-[0258]. Note the allocation of resources (e.g., paragraph [0219]) to the requests in the queues (e.g., paragraph [0223]) by using minimum bit rates (e.g., paragraphs [0074]-[0076]) as bit rate allocation portions (paragraphs [0074]-[0076], [0149], [0205], [0218]-[0219], [0221], [0223], [0231], [0240], and [0257]-[0258]; note e.g., that all allocations are per cell, per service class, and per flow; and that minimum bit rates are portions available and allocated to e.g., all service classes). It is respectfully requested, that if Applicant disagrees with the Examiner's interpretation, to provide clarification as to the term "as bit rate allocation portions". It is unclear as to what portions Applicant is referring to and/or if it refers

to portions of something undisclosed or not claimed. Furthermore, it is noted that the claims are apparatus claims. Apparatus claims must be structurally distinguishable from the prior art. While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) Apparatus claims cover what a device is, not what a device does." Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). See MPEP 2114.

In response to applicant's argument that Daniel fails to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., minimum bit rates for bit rate classes and a general minimum bit rate; that resources in a telecommunications system can be allocated by using at least one of: the minimum bit rates for the bit rates class and the general bit rate as bit rate allocation portions; and not setting a target to a maximum transmission power (Remarks: page 19, 1st-2nd full paragraphs)) are not recited in the rejected claim(s) 17, 21, and 25. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Regarding claims 1-6, 8-14, and 16-26, Applicant initially included the same arguments (Remarks: page 26, 1st paragraph through page 28, 1st full paragraph) as the ones previously submitted on 12/14/06. Accordingly, the same response applies.

Applicant further argues that Daniel does not disclose or suggest: that minimum bit rates for bit rate classes and a general minimum bit rate would be set (Remarks: page 28, last paragraph), in addition that resources in a telecommunication system can be allocated by using at

least one of: the minimum bit rates for the bit rate classes and the general bit rate as bit rate allocation portions (Remarks: page 28, last paragraph), and that Daniel does not set a target to a maximum transmission power (Remarks: page 29, 1st paragraph). At the outset, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). As stated in the last Office Action, the primary reference (Raitola et al. WO 01/63851) discloses setting a general minimum bit rate, Daniel discloses setting minimum bit rates for the bit rate classes; the combination of Ratiola in view of Daniel discloses that minimum bit rates for bit rate classes and a general minimum bit rate would be set (see last Office Action: section 13). In addition, as stated above, Daniel discloses that resources in a telecommunication system can be allocated by using at least one of: the minimum bit rates for the bit rate classes and the general bit rate as bit rate allocation portions; note that the claim only requires one of them to be used. Further, Raitola also discloses setting a target to a maximum transmission power (see last Office Action, section 13).

In response to applicant's argument that there is no suggestion to combine the references (Remarks: page 29, 2nd paragraph), the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, both references are in the same field of

endeavor, relating to packet and resource allocation, the teaching, suggestion, or motivation to combine found in Daniel, i.e., for the advantage of categorizing flows, all of which require the same type of resource treatment and allocation, used to maintain levels of service for a-certain group or type of flows (Daniel: page 4, paragraphs [0052]-[0053]), and defining specific quantitative treatment and flow parameters per class that guarantees a portion of bandwidth throughout the time of its passage through the system and is, by default, available to all service classes (Daniel: page 6, paragraphs [0074]-[0076] and [0019]) (see combination in last Office Action, section 13).

Furthermore, it is noted that claims 9-14, 16, 17-26 are apparatus claims. Apparatus claims must be structurally distinguishable from the prior art. While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) Apparatus claims cover what a device is, not what a device does." Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). See MPEP 2114.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 17, 21, and 25 are rejected under 35 U.S.C. 102(e) as being anticipated by Daniel et al. (hereinafter "Daniel"; Pub. No.: US 2004/0033806).

Regarding claim 17, Daniel discloses a base station comprising:

a resource arrangement unit configured to arrange resource requests into a queue (paragraphs [0222]-[0223]); and

a resource allocation unit configured to allocate resources in a telecommunication system according to the requests in the queue by using the minimum bit rates as bit rate allocation portions (paragraphs [0074]-[0076], [0149], [0205], [0218]-[0219], [0221], [0223], [0231], [0240], and [0257]-[0258]).

Regarding claims 21 and 25, which recite base station versions of claim 17, see rationale as previously discussed above.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 1-6, 8-14, and 16-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Raitola in view of Daniel.

Regarding claim 1, Raitola discloses a data transmission method comprising:

determining a number of bit rate classes (page 20, lines 18-32; See also *Response to Arguments* section above);

setting a general minimum bit rate (Figs. 3-4; page 19, lines 11-30);

setting a maximum transmission power target (Figs. 3-4; page 10, lines 10-11);

arranging resource requests into a queue (Fig. 4; page 10, line 31 through col. 11, line 7); and

allocating resources in a telecommunication system according to the requests in the queue by using as bit rate allocation portion at least one of: the minimum bit rates for the bit classes and the general bit rate until the maximum power target is achieved (Figs. 3-4).

Raitola fails to specifically disclose setting minimum bit rates for the bit rate classes and allocating resources by using as bit rate allocation portions (note the plurality) at least one of: the minimum bit rates for the bit classes and the general bit rate.

However, in the same field of endeavor, Daniel discloses determining a number of bit rate classes (page 5, paragraphs [0062]-[0066], [0068]-[0069], and [0073]); setting minimum bit rates for the bit rate classes (Fig. 4B; paragraphs [0074]-[0076], [0079], [0205]); arranging resource requests into a queue (paragraphs [0222]-[0223]), and allocating resources in a telecommunication system according to the requests in the queue by using as bit rate allocation portions at least one of: the minimum bit rates for the bit classes and the general bit rate (paragraphs [0149], [0205], [0218]-[0219], [0221], [0223], [0231], [0240], and [0257]-[0258]).

Therefore, it would have been obvious to one of ordinary skill in this art at the time of invention by applicant to determine a number of bit rate classes of Raitola, set minimum bit rates for the bit rate classes and allocate resources by using as bit rate allocation portions at least one of: the minimum bit rates for the bit classes and the general bit rate as suggested by Daniel for the advantage of categorizing flows, all of which require the same type of resource treatment and allocation, used to maintain levels of service for a certain group or type of flows (Daniel: page 4,

paragraphs [0052]-[0053]), and defining specific quantitative treatment and flow parameters per class that guarantees a portion of bandwidth throughout the time of its passage through the system and is, by default, available to all service classes (Daniel: page 6, paragraphs [0074]-[0076] and [0019]).

Regarding claims 9, 19, and 23, which recite a radio network controller versions of claim 1, see rationale as previously discussed above (see also, Raitola: (page 9, lines 4-5)).

Regarding claim 2, Raitola discloses a data transmission method comprising:

determining a number of bit rate classes (page 20, lines 19-32; See also *Response to Arguments* section above);

setting a general minimum bit rate (Figs. 3-4; page 19, lines 11-30);

setting a maximum transmission power target ((Figs. 3-4; page 10, lines 10-11);

arranging resource requests into a queue (Fig. 4; page 10, line 31 through col. 11, line 7);

allocating resources in a telecommunication system according to the requests in the queue by using as bit rate allocation portion at least one of: the minimum bit rates for the bit classes and the general bit rate (Figs. 3-4);

if the maximum transmission power target is not achieved when resources have been allocated to all users in the queue, increasing bit rates based on the queue until the maximum transmission power target is achieved (Fig. 4); and

if the resource requests cause too much load in relation to the maximum transmission power target, decreasing the required number of bit rates in a predetermined way (Fig. 6; page 18, lines 5-10).

Raitola fails to specifically disclose setting minimum bit rates for the bit rate classes and allocating resources by using as bit rate allocation portions (note the plurality) at least one of: the minimum bit rates for the bit classes and the general bit rate.

However, in the same field of endeavor, Daniel discloses determining a number of bit rate classes (page 5, paragraphs [0062]-[0066], [0068]-[0069], and [0073]); setting minimum bit rates for the bit rate classes (Fig. 4B; paragraphs [0074]-[0076], [0079], [0205]); arranging resource requests into a queue (paragraphs [0222]-[0223]), and allocating resources in a telecommunication system according to the requests in the queue by using as bit rate allocation portions at least one of: the minimum bit rates for the bit classes and the general bit rate (paragraphs [0149], [0205], [0218]-[0219], [0221], [0223], [0231], [0240], and [0257]-[0258]).

Therefore, it would have been obvious to one of ordinary skill in this art at the time of invention by applicant to determine a number of bit rate classes of Raitola, set minimum bit rates for the bit rate classes and allocate resources by using the minimum bit rates as bit rate allocation portions as suggested by Daniel for the advantage of categorizing flows, all of which require the same type of resource treatment and allocation, used to maintain levels of service for a certain group or type of flows (Daniel: page 4, paragraphs [0052]-[0053]), and defining specific quantitative treatment and flow parameters per class that guarantees a portion of bandwidth throughout the time of its passage through the system and is, by default, available to all service classes (Daniel: page 6, paragraphs [0074]-[0076] and [0019]).

Regarding claims 10, 20, and 24, which recite a radio network controller versions of claim 2, see rationale as previously discussed above (see also, Raitola: (page 9, lines 4-5)).

Regarding claim 3, in the obvious combination, Daniel discloses further comprising determining the bit rate classes based on a required quality of service (paragraphs [0001], [0014], [0068]-[0069], and [0073]).

Regarding claim 11, which recites a radio network controller version of claim 3, see rationale as previously discussed above (see also, Raitola: (page 9, lines 4-5)).

Regarding claim 4, in the obvious combination, Daniel discloses further comprising setting the bit rate classes based on a quality of service parameter, wherein the quality of service parameter comprises allocation retention priority (paragraphs [0001], [0014], [0068]-[0069], and [0073]; note that the classes are fairly characterized as being set on the basis of Allocation Retention Priority since classes are prioritized).

Regarding claim 12, which recites a radio network controller version of claim 4, see rationale as previously discussed above (see also, Raitola: (page 9, lines 4-5)).

Regarding claim 5, in the obvious combination, Raitola discloses further comprising: when the maximum transmission power threshold is exceeded, decreasing the bit rate by allocating to a user a general minimum bit rate (Fig. 7b; page 20, lines 10-16; note that the general minimum bit rate is 128 kbps).

Regarding claim 13, which recites a radio network controller version of claim 5, see rationale as previously discussed above (see also, Raitola: (page 9, lines 4-5)).

Regarding claim 6, in the obvious combination, Raitola discloses further comprising: when the maximum transmission power threshold is exceeded, decreasing the bit rate by allocating to a user minimum bit rate (Fig. 6; page 20, lines 10-28).

Raitola fails to specifically disclose a class-specific minimum bit rate.

However, Daniel discloses allocating to a user a class-specific minimum bit rate (paragraphs [0073]-[0076], [0079]).

Therefore, it would have been obvious to one of ordinary skill in this art at the time of invention by applicant to decrease the bit rate of Raitola by allocating to a user a class-specific minimum bit rate as suggested by Daniel for the advantages of complying with a guaranteed portion of the bandwidth, for flows sharing the same service type and priority level, to receive at least this amount of bandwidth resources as a minimum, throughout the period of its existence (Daniel: paragraphs [0068] and [0076]) and preventing loss of data.

Regarding claim 14, which recites a radio network controller version of claim 6, see rationale as previously discussed above (see also, Raitola: (page 9, lines 4-5)).

Regarding claim 8, in the obvious combination, Raitola discloses further comprising: if the general minimum bit rate or a class specific minimum bit rate is allocated to the users (Fig. 7b) and the load remains too high (Fig. 7b), transferring a required number of users to a control channel (Fig. 7b).

Regarding claim 16, which recites a radio network controller version of claim 8, see rationale as previously discussed above (see also, Raitola: (page 9, lines 4-5)).

Regarding claim 17, Raitola discloses a base station (page 9, lines 27-30) comprising:

a resource arrangement unit configured to arrange resource requests into a queue (Fig. 4; from page 9, line 31 through page 10, line 7); and

a resource allocation unit configured to allocate resources according to the requests in the queue by using minimum bit rate as bit rate allocation portion (Figs. 3-4; from page 9, line 31 through page 10, line 3).

Raitola fails to specifically disclose allocating resources by using minimum bit rates as bit rate allocation portions (note the plurality).

However, in the same field of endeavor, Daniel discloses resource arrangement unit configured to arrange resource requests into a queue (paragraphs [0022]-[0023]); and a resource allocation unit configured to allocate resources according to the requests in the queue by using minimum bit rates as bit rates allocation portions (paragraphs [0074]-[0076], [0149], [0205], [0218]-[0219], [0221], [0223], [0231], [0240], and [0257]-[0258]).

Therefore, it would have been obvious to one of ordinary skill in this art at the time of invention by applicant to allocate resources of Raitola by using minimum bit rates as bit rate allocation portions as suggested by Daniel for the advantage of categorizing flows, all of which require the same type of resource treatment and allocation, used to maintain levels of service for a certain group or type of flows (Daniel: page 4, paragraphs [0052]-[0053]), and defining specific quantitative treatment and flow parameters per class that guarantees a portion of bandwidth throughout the time of its passage through the system and is, by default, available to all service classes (Daniel: page 6, paragraphs [0074]-[0076] and [0019]).

Regarding claims 21 and 25, which recite base station versions of claim 17, see rationale as previously discussed above.

Regarding claim 18, Raitola discloses a base station (page 9, lines 27-30) comprising:

resource arrangement unit configured to arrange resource requests into a queue (Figs. 3-4; from page 9, line 31 through page 10, line 7);

a resource allocation unit configured to allocate resources according to the requests in the queue by using minimum bit rate as bit rate allocation portion (Figs. 3-4; from page 9, line 31 through page 10, line 3);

a bit rate increaser unit configured to increase bit rates based on the queue until a maximum target set for a transmission power is achieved (Fig. 4); and

a bit rate decreaser unit configured to decrease a required number of bit rates in a predetermined way (Fig. 6; page 20, lines 10-28).

Raitola fails to specifically disclose allocating resources by using minimum bit rates as bit rate allocation portions (note the plurality).

However, in the same field of endeavor, Daniel discloses resource arrangement unit configured to arrange resource requests into a queue (paragraphs [0022]-[0023]);

and a resource allocation unit configured to allocate resources according to the requests in the queue by using minimum bit rates as bit rates allocation portions (paragraphs [0149], [0205], [0218]-[0219], [0221], [0223], [0231], [0240], and [0257]-[0258]).

Therefore, it would have been obvious to one of ordinary skill in this art at the time of invention by applicant to allocate resources of Raitola by using minimum bit rates as bit rate allocation portions as suggested by Daniel for the advantage of categorizing flows, all of which require the same type of resource treatment and allocation, used to maintain levels of service for a certain group or type of flows (Daniel: page 4, paragraphs [0052]-[0053]), and defining specific quantitative treatment and flow parameters per class that guarantees a portion of bandwidth throughout the time of its passage through the system and is, by default, available to all service classes (Daniel: page 6, paragraphs [0074]-[0076] and [0019]).

Regarding claims 22 and 26, which recite base station versions of claim 18, see rationale as previously discussed above (see also, Raitola: (page 9, lines 27-30)).

Allowable Subject Matter

6. Claims 7 and 15 are allowed.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marivelisse Santiago-Cordero whose telephone number is (571) 272-7839. The examiner can normally be reached on Monday through Friday from 7:30am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Trost can be reached on (571) 272-7872. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

msc 4/26/07

MSC

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